

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
JAN 17 2018
Mather
CLERK

RICHARD LITSCHEWSKI,

Plaintiff,

vs.

DENNIS KAEMINGK, SECRETARY OF CORRECTION OF STATE OF SOUTH DAKOTA, INDIVIDUAL AND OFFICIAL CAPACITY; AND ROBERT DOOLEY, WARDEN AT MIKE DURFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY;

Defendants.

1:17-CV-01023-RAL

ORDER DENYING MOTION FOR EXTENSION OF TIME TO FILE A NOTICE OF APPEAL AND DENYING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Plaintiff Richard Litschewski, a former inmate of the Mike Durfee State Prison in Springfield, South Dakota, brought this action challenging his state court sexual assault convictions, the calculation of his sentence length/release date, or the conditions of his confinement. Doc. 1. On November 27, 2017, this Court filed an Opinion and Order Screening Case and Ruling on Pending Motions and an accompanying Judgment of Dismissal. Docs. 9, 10.

On December 26, 2017, Plaintiff Richard Litschewski filed a motion for extension of time to file notice of appeal and for a court appointed attorney. Doc. 16. Litschewski claims he needs an extension in order research and prepare an appeal.

Federal Rule of Appellate Procedure 4(a)(5)(A) states:

The district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

Rule 4(a)(1)(A) states that a notice of appeal “must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.”

Litschewski’s motion for extension was filed on December 26, 2017. Doc. 16. Thus, he satisfied the first prong of Rule 4(a)(5). Litschewski must next show that the reason he is entitled to an extension is because of “excusable neglect or good cause.” *Gibbons v. United States*, 317 F.3d 852, 853 (8th Cir. 2003). Upon review of his motion, Litschewski does not show that “good cause” warrants an extension, nor does he show any “excusable neglect.” The reason he wants an extension is so he can review case law that is not provided to him by the prison and decide whether he should appeal. Doc. 16. This reason is insufficient to warrant an extension.

Litschewski also requested this court appoint him counsel on appeal. Doc. 16. This Court has no authority to appoint counsel to parties before other courts.

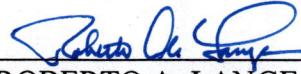
On January 16, 2018, Litschewski moved to appeal without prepayment of fees. Doc. 18. The notice of appeal filed by Litschewski has been transmitted to the United States Court of Appeals for the Eighth Circuit, Doc. 20, which frequently looks to the district court to rule on in forma pauperis motions. Under Federal Rule of Appellate Procedure 24, “A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization[.]” This court granted Litschewski’s motion to proceed without prepayment of fees. Doc. 9. Therefore, Litschewski may proceed on appeal in forma pauperis without further authorization from this court. Since that time, however, Litschewski was released from prison. According to his declaration after release, Litschewski’s only source of income is monthly veterans disability payments of \$139.00. Doc. 18. Litschewski appears to be indigent. Accordingly it is,

ORDERED that Plaintiff's motion for leave to proceed in forma pauperis on appeal, Doc. 18, is moot because he may proceed without further authorization, and to the extent that it somehow is not moot, is granted. It is further

ORDERED that Litschewski's motion for extension of time to appeal and for a court appointed attorney, Doc. 16, is denied.

DATED this 14th day of January, 2018.

BY THE COURT:


ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE